IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 7187 of 1996

Between:

B. Prasada Rao s/o Anandarao
V.S.R. & N.V.R.College, Tenali.

..... PETITIONER

AND

1 Govt. of A.P., rep. by its Principal Secretary, Education (Higher Education) Department, Secretariat Buildings, Hyderabad.
2 Commissioner of collegiate Education, Andhra Pradesh, Hyderabad.
3 Correspondent, V.S.R. & N.V.R.College, Tenali.
4 Smt. Jhansi Lakshmi, V.S.R. & N.V.R.College, Tenali, Guntur district.
5 V.V. Basava Rao, V.S.R. & N.V.R.College, Tenali, Guntur District.
6 Y.S. Prakasa Rao, V.S.R. & N.V.R.College, Tenali, Guntur District.
7 D. Rajya Lakshmi, V.S.R. & N.V.R.College, Tenali, Guntur District. R7-Dismissed for default as per court order dt 14/2/03

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, especially in the nature of writ of Mandamus i) declaring the impugned proceedings viz., G.O.Rt.No.1028 Edn. (C.E.II-1) Department dated 24.6.94 of the Government of Andhra Pradesh and the proceedings of the Commissioner of collegiate Education, A.P. Hyderabad in Rc.No.1343/PC-1-4/94 dated 1.8.94 are illegal, without jurisdiction, null and void ii) declaring the promotions of the respondents 4 to 7 as illegal and without jurisdiction. iii) directing the respondents 1 to 3 to promote the petitioner to the aided post of Record Assistant with effect from 10.1.74. iv) declaring that the petitioner is senior to respondents 4 to 7 in the post of attender as well as record assistant and v) directing the respondents 1 to 3 to pay the arrears of salary due to the petitioner in the post of record assistant with effect from 25.3.92 and continue to pay the future salary as Record Assistant in the government scale of pay.

Counsel for the Petitioner:MR.K.HARINATH

Counsel for respondent Nos.1& 2: G.P. for Higher Education.

Counsel for respondent Nos.4 & 5: Sri B.Bhaskara Rao

Counsel for the Respondent No.3: Sri D.V.SITARAMAMURTHY

The Court made the following :

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O R D E R:

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This writ petition is filed seeking a writ of Mandamus declaring G.O.Rt.No.1028/Edn (C.E.II-1) Department, dated 24.06.1994 issued by the Government of Andhra Pradesh and the proceedings of the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad, in Rc.No.1343/PC-1-4/94, dated 01.08.1994 as illegal and without jurisdiction and consequently declare the promotions of respondents 4 to 7 as illegal and to direct respondents 1 to 3 to promote the petitioner to the aided post of Record Assistant with effect from 10.01.1974, declaring that the petitioner is senior to respondents 4 to 7 in the post of Attendar as well as Record Assistant and to pay arrears of salary due to the petitioner in the post of Record Assistant with effect from 25.03.1992 and continue to pay the future salary as Record Assistant in the Government scale of pay.

It is the case of the petitioner that he was initially appointed as Attendar in an aided vacancy with effect from 21.12.1967. In the year 1974 when a vacancy of Record Assistant arose in a regular aided post, instead of appointing the petitioner, respondent No.4 was appointed in the said vacancy. However, the petitioner was also promoted as Record Assistant in the year 1978 against an un-aided vacancy and continued as such. Further, in the year 1982, when three more aided vacancies of Record Assistants arose, respondents 5 to 7 were appointed, denying the right of the petitioner to be appointed against an aided vacancy. Even otherwise, the petitioner is entitled for wages as Record Assistant on par with others, right from 1978 till the date of his retirement from the services.

A detailed counter affidavit has been filed denying the allegations made by the petitioner. It is asserted in the counter that the petitioner and two others preferred to

remain as Attendars, when their turn came for being promoted to the post of Record Assistant (aided) and gave up their right for promotion, since the age of superannuation for Attendar is 60 years and the age of superannuation for Record Assistant is 58 years. Thus, the petitioner himself refused for being promoted to the post of Record Assistant. However, he was appointed as Record Assistant in the year 1978 against an unaided vacancy. There after, the petitioner himself gave a letter, dated 04.03.1991 to the Special Officer, stating that he was working as an un-aided Record Assistant in the College and he is willing to accept the aided post of Attendar, if offered. Under those circumstances, the name of the petitioner was recommended for the appointment and continuation of his services in the aided vacancy of Attendar. Therefore, the Government was kind enough to regularize the services of the petitioner and appoint him as Attendar against the aided vacancy. It is further asserted that the petitioner was appointed as aided Games Boy from 03.01.1968 till the date of his promotion as unaided Record Assistant in 1978 and ever since the date of his promotion as unaided Record Assistant, he never draw the aided scale in the cadre of Attendar. Basing on his own representation, the then Special Officer admitted to grand-in-aid post of Attendar from 24.06.1994 and the said action of the Special Officer was ratified by the 2nd respondent vide proceedings in Rc.No.1493/PC-IV/91, dated 01.08.1994. There after, the petitioner was absorbed in to the grand-in-aid post of Attendar in 1994 and he was paid arrears of salary of Rs.83,568/-, which he received without any protest and subsequently, the petitioner was promoted as aided Record Assistant and continued as such till his retirement.

From the above, it is seen that the very claim of the petitioner is speculative. Earlier, the petitioner and two other Attendars refused to be promoted to the post of Record Assistant in the year 1974, since the age of superannuation of Attender was 60 years and the age of superannuation for the post of Record Assistant was 58 years.

There after, he was promoted as Record Assistant in the year 1978 against an un-aided vacancy, but he did not challenge this action of the respondents at any point of time. On the other hand, as stated by the respondents, the petitioner submitted a representation, dated 04.03.1991 before the Special Officer, giving his willingness to work as Attendar in the aided post and therefore, he was appointed as Attendar in an aided post and his arrears were also paid as stated supra. In this writ petition, the petitioner not only challenges the promotion of respondent No.4 to the post of Record Assistant in the year 1974 but also seeks a declaration that the promotion of respondents 5 to 7 in the year 1982 as Record Assistant is bad in law. Having received all the benefits of an attender, the petitioner intends to challenge the action of the respondents of the 1974 in promoting R.No.4 and of 1982 in promoting R5 to 7, which is not permissible at this length of time. The writ petition is imaginative, speculative, misconceived and devoid of merits, as such it is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

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C.V.RAMULU.J.,

Dt.30.12.2004

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To

1 Principal Secretary, Govt. of A.P., Education (Higher Education) Department, Secretariat Buildings, Hyderabad.
2 Commissioner of collegiate Education, Andhra Pradesh, Hyderabad.
3 Correspondent, V.S.R. & N.V.R.College, Tenali.
4 2CD copies.